

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MEDINA-CRUZ,

PETITIONER

v.

UNITED STATES OF AMERICA,

RESPONDENT.

CRIM NO. 12-649 (JAG)

MEMORANDUM & ORDER

In this case, Xiomara Medina-Cruz ("Medina-Cruz") pled guilty to violations of 18 U.S.C. §§ 1951, 924(c)(1)(A)(ii) and (2) for her armed robbery of a pharmacy. (See Docket No. 43). The Court accepted her plea of guilty, (Docket No. 45), and sentenced her to sixty months of imprisonment. (Docket No. 53). The Court entered Judgment on February 4, 2014; defendant did not appeal, and so the Judgment became final and firm thirty days later, on March 6, 2013. (Docket No. 54).

Now before the Court is Medina-Cruz's motion for *habeas* relief under 28 U.S.C. § 2255. Medina-Cruz petitions the Court for a resentencing, arguing that her original sentence is invalid under Alleyne v. United States, 133 S. Ct. 2151, 2153, 186 L. Ed. 2d 314 (2013). Her petition lacks merit.

So far, at least seven circuit courts have found, either as a holding or in dicta, that Alleyne does not apply retroactively to cases in which final judgment has been entered. See e.g. United States v. Redd, 735 F.3d 88 (2d Cir. 2013); United States v. Winkelman, 2014 WL 1228194 (3d Cir. 2014); United States v. Stewart, 540 F. App'x 171 (4th Cir. 2013); In re Kemper, 735 F.3d 211 (5th Cir. 2013); Simpson v. United States, 721 F.3d 875 (7th Cir. 2013); In re Payne, 733 F.3d 1027 (10th Cir. 2013); United States v. Harris, 741 F.3d 1245 (11th Cir. 2014). Alleyne was decided more than four months after final judgment was entered in this case. As such, Petitioner is not entitled to seek relief through the Supreme Court's pronouncement in Alleyne. Motion denied.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 22nd day of May, 2014.

S/ Jay A. García-Gregory
JAY A. GARCÍA-GREGORY
United States District Judge